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EXAMINER

O'HARA, BRIAN M

ART UNIT	PAPER NUMBER
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3644

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/554,309	Applicant(s) GYGAX, HANS	
	Examiner Brian M. O'Hara	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: On line 3 the word "Maximally" should be changed to "Maximum". Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 states "that means with an admitted maximum take-off weight" in lines 2-3. It is unclear what means (means for? means of?) are corresponding to the maximum take-off weight. It is believed that applicant is attempting to define an airplane class, however, the above phrase renders the claim indefinite since it is unclear what aircraft structure is required by the claims by having a weight of 452.5kg to 590kg. Additionally, it is unclear structure is being defined by use of the word admitted.

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4. On Line 4, Claim 1 states "according to respective regulations". There is insufficient antecedent basis for this limitation in the claim. Regulations have not been defined in the claim and there is no disclosed structure corresponding to these regulations. What "regulations" are being referred to? What is defined by these regulations?

5. On Line 7, Claim 1 states "comprising a virtual flat cabin floor". This phrase is indefinite because it is unclear what comprises the cabin floor. Do the two passenger seats comprise the floor? Does the nose or cabin cell comprise the floor? Additionally it is unclear what is meant by the word "virtual". Generally speaking the word virtual means that which is not real. So it is an imaginary floor?

6. On Lines 7-8, Claim 1 states "comprising which does leave free an orthorhombic space". This phrase is indefinite because it is unclear how the cabin floor "does leave free" an orthorhombic space. What structure is being claimed which leaves the floor free from the space?

7. The following claims rejections are written and examined as best understood.

Claim Rejections - 35 USC § 103

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by applicants admitted prior art or, in the alternative, under 35 U.S.C. 103(a) as obvious over applicant's admitted prior art on Pages 1-3 of the specification in view of Fronk (US Patent 4,483,499 A). Applicant discloses a ultra light aeroplane (IKARUS C42) comprising: an engine arranged at the nose with tractor propellers, cabin cell arranged behind and being wide enough for two adjacent passenger seats (See Page 2, lines 1-9), the cabin space allowing the reception of a person lying on a stretcher (Page 3, "IKARUS C42 has a passenger cell that is sufficiently large enough to transport in it a person lying down").

11. If applicant feels that the cabin of the IKARUS C42 is not sufficiently large to accommodate a person lying on a stretcher, Fronk teaches an aircraft cabin for a light aircraft with a flat floor which is at least 190 cm in length, 45cm wide, and 40cm in height that allows the reception of a person lying on a stretcher (See Fig. 3). Fronk shows a cabin with room for at least two stretchers and seating to the side of the stretchers. At the time of invention, it would have been obvious to one of ordinary skill in the art, to provide the light aircraft of Applicant's admitted prior art with a cabin sized for a stretcher in view of the teaching of Fronk. The motivation for doing so would have been to enable a person to sleep in the aircraft.

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12. Claims 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art on Pages 1-3 and Fronk as applied to claim 1 above, and further in view of www.comco-ikarus.de/ (2003).

13. Along with the web page dated 2003, an English translation with figure numbers added for purposes of discussion provided on 04/02/2009. The English translation is referred to throughout the remainder of the rejection below.

14. Applicant's admitted prior art states that "the ultralight or ecolight aeroplane presented here is designed using a conventional construction" (Page 1, Lines 14-16) and "Ultralight or ecolight aeroplanes with this basic construction are already known" (Page 1, Line 20). These above two statements including a review of the www.comco-ikarus.de/ reference reveals that the IKARUS C42 has the same design including the same elements as listed in claims 2-10 as the current invention with the exception that the current invention is sized up for the new supported MTOW and provided with a virtual flat floor.

15. More specifically, applicants admitted prior art describes the IKARUS C42 with a central tube (Page 2, Line 2), a tube-grate frame (Page 2, Lines 5-6), synthetic panels which determine the aesthetic appearance of the aeroplane (page 2, Lines 11-16), and wing bracings (Page 2, Line 8).

16. www.comco-ikarus.de/ teaches an ultra light airplane with gable shaped arranged shock strut tubes (See Fig. 3), a U-shaped profile (Fig. 3 shows round fuselage immediately behind the wing), a square shaped profile (Portion under wing, See Fig. 3), doors that are fixed above (See Fig. 5), carbon fiber fairings (Page 2), a

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100 liter fuel tank (Page 1 50+50 liter tank), welded tube construction with thread sleeves (Page 2, fittings and screws made of stainless steel or high strength standard elements), and towing of a glider (See Fig. 4).

17. In view of applicant's disclosure concerning the construction of the aircraft, and the technical specifications available on www.comco-ikarus.de/, it would have been obvious to one of ordinary skill in the art to provide the large cabin ultralight aircraft of the applicant's admitted prior art and Fronk as described above, with the design elements of the IKARUS C42 as taught by www.comco-ikarus.de/. The motivation for doing so would have been to provide a larger cabin aircraft that is also light in weight to conserve fuel.

Response to Arguments

18. Applicant's arguments filed 07/02/2009 have been fully considered but they are not persuasive. Applicant states on page 14 that "neither Fronk nor any other cited prior art reference discloses or suggests an aircraft of the very weight-limited and demanding category of the MTOW (e.g., Ecolights, Ultralights, or the US Sports Plane Category (SPC)) that allows the reception of a person lying on a stretcher for air-transporting of the person, as recited in claim 1;" and on page 15 "it is clear that none of the prior art references discloses or suggests an aircraft of the very weight-limited and demanding category of the MTOW (e.g., Ecolights, Ultralights, or the US Sports Plane Category (SPC)) that allows the reception of a person lying on a stretcher for air-transporting of the person, as recited in claim 1."

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19. These arguments are not seen to be commensurate with the scope of the claims. The claims do not clearly define the MTOW of the aircraft. It is unclear if claim 1 is defining an airplane class, or defining the weight of an aircraft, or what structure has a maximum take-off weight. Applicant has not specifically pointed out what claimed airplane structure is not being met by the applied references.

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian M. O'Hara whose telephone number is (571)270-5224. The examiner can normally be reached on Monday thru Friday 10am - 5pm except the first Friday of every Bi-week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on (571)272-6608. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/
Supervisory Patent Examiner, Art Unit 3644

/B. M. O./
Examiner, Art Unit 3644